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CHARLES ELMORE CROPLEY

No. 74

The Supreme Court of the United States

OCTOBER TERM, 1942.

WALTER L. MANGUS AND
ROSE L. MANGUS,
Petitioners,

vs.

MATTHEW A. MILLER,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR PETITIONERS

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E. J. SKEEN,
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PETITION FOR CERTIORARI FILED APRIL 11, 1942.
CERTIORARI GRANTED MAY 25, 1942.

INDEX

Argument 5-16

All Property of a Farmer-Debtor is Subject to Jurisdiction of Bankruptcy Act 5-7

Difficulties of Administering Property Under Section 75, Not Insurmountable 15-16

Interest of Joint Purchaser Under Contract for Sale of Land is "Property" Within the Meaning of the Statute 7-13

Rose L. Mangus Was Not an Indispensable Party 13-15

Jurisdictional Grounds 1

Specification of Errors 4-5

Statement of the Case 2-4

TABLE OF CITATIONS

Section 24 (c) of the Bankruptcy Act as Amended June 22, 1938, ... 1

Section 75 of the Bankruptcy Act, 11 U. S. C. A. Sec. 203, ... 2

Subsection o, Section 75, Bankruptcy Act 13

Subsection S (4) of Section 75. 13

Subsection S (4) of Section 75, 11 U. S. C. A., Sec. 203 s (4), ... 9

Section 75 (n) 5, 7, 11, 16

125 F (2d) 507 2

John Hancock Mut. L. Ins. Co. v. Bartels, 308 U. S. 180; 84 L. Ed. 176; 60 S. Ct 221 7

In re Ben Boldt, Jr. Floral Co., (CCA 10), 37 F. (2d) 499. 9

(Table Continued).

TABLE OF CITATIONS
(A Continuation).

Karren v. Rainey, 30 Utah 7; 83 P. 333.. 14

Kalb v. Feuerstein, 308 U. S. 433; 84 L. Ed. 370; 60 S. Ct. 343; 41 Am. Bankr. Rep. (N. S.) 501. ....6, 7, 13

Newforth v. Hall, 5 Kan. App. 726; 46 P. 982, ...12

Section 240 of the Judicial Code, 28 U. S. C. A., Section 347,..... 1

Sections 45-0-1, and 45-0-2, Revised Statutes of Utah, 1933,..... 10

Section 104-3-18, Revised Statutes Utah,. 14

Section 104-37-9, Revised Statutes of Utah, 1933, ...10

Smith v. Jones, 21 Utah 270; 60 P. 1104.. 9

Spalding v. Allred, 23 Utah 354; 64 P. 1100.....10

4 Thompson on Real Property (Perm. Ed.), Secs. 1780-1783..... 9

1 Tiffany Real Property (3rd Ed.), Sec. 307. 9

Title 47, Revised Statutes of Utah, 1933, ...11

11 U. S. C. A., Section 203 (o) 5-6

2 Williston on Contracts, (Rev. Ed.), Secs. 326, 327. 13

Wright v. Logan, 62 S. Ct. 508; 86 L. Ed. 443, ...6

Wright v. Union Central Life Ins. Co., 311 U. S. 273; 85 L. Ed. 184; 61 S. Ct. 196.. 7

Wythe's Va. Rep., Appendix 401, 402 ... .13

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JURISDICTIONAL GROUNDS

Section 240 of the Judicial Code, 28 U.S.C.A., Sec. 347, authorizes this Court to issue a writ of certiorari and to thereupon determine the cause with the same power and authority and with like effect, as if the cause had been brought up by unrestricted writ of error or appeal.

Section 24 (c) of the Bankruptcy Act as Amended June 22, 1938, provides:

> The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals of the District of Columbia in proceedings under this title in accordance

with the provisions of the laws of the United States now in force or such as may hereafter be enacted. 11 U. S. C. A. Sec. 47, as amended June 22, 1938, C. 575, Sec. 1, 52 Stat. 854.

STATEMENT OF THE CASE

The petitioners seek the reversal of the judgment of the United States Circuit Court of Appeals for the Tenth Circuit which directed that certain real estate be stricken from the debtors' schedules in a proceeding under Section 75 of the Bankruptcy Act. The reference to the official report of the opinion is

125 F. (2d) 507.

Walter L. Mangus filed a petition for relief under Section 75 of the Bankruptcy Act, 11 U.S.C.A, Sec. 203, on December 28, 1940, scheduling land subject to an indebtedness of $3000 on a contract of sale. (R. 18). The contract was originally between James K. Miller, vendor, and Walter L. Mangus and Rose L. Mangus, his wife, purchasers, as "joint tenants with full rights of survivorship and not as tenants in common." Subsequently, James K. Miller assigned his interest in the contract to the respondent, Matthew A. Miller. (R. 4).

On January 27, 1941, the respondent filed a motion to strike from the schedules the real estate described in the contract. (R. 3).

The motion was supported by an affidavit of Matthew A. Miller in which it is alleged that the petitioners contracted, on November 3, 1938, to purchase said real estate for $4000, payable $500 cash, and the balance in installments of $35 a month; that the land subject to the contract and the contract were transferred to affiant; that the contract provides for termination upon default in the making of

payments; that on November 30, 1940, the buyers, being in default, the vendor notified them of the default and demanded that they fully make up and pay

> "on or before January 3, 1941, all delinquencies, and that in case of their failure so to do that the vendor would, without notice or demand, be released of all obligations to convey said property and that said agreement and the buyers' rights, interest and possession in said property would thereupon forthwith terminate and end, and be of no further force or effect whatever."

It is then alleged that the buyers failed to pay on or before the date set; that Walter L. Mangus filed his proceeding herein and scheduled the property described in the contract, but that the court was wholly without jurisdiction over said property and that it should be stricken from the schedules. (R. 4-5).

On February 6, 1941, Rose L. Mangus adopted the petition and schedules of Walter L. Mangus and joined the proceeding. (R. 6). Her joinder was authorized and was by order, dated February 6, 1941, approved by the District Court. (R. 7).

On February 8, 1941, respondent filed a supplemental motion, for an order striking the property from the schedules. It is alleged in the supporting affidavit, after reciting the facts hereinabove detailed, that the court acquired no jurisdiction because of the failure of both joint tenants to join when the proceeding was commenced; that at the time Rose L. Mangus joined in the proceeding, she had no interest in the property, and that the court "continues to be without jurisdiction thereof." (R. 7-8).

On February 24, 1941, the District Court denied both the motion and supplemental motion to strike. (R. 9). Matthew A. Miller appealed to the United States Circuit Court of Appeals for the Tenth Circuit. The judgment was affirmed as to Walter L. Mangus and reversed as to

Rose L. Mangus. The opinion is not reported. A petition for rehearing filed by Miller was granted anl after rehearing, the Circuit Court of Appeals, reversed the judgment of the District Court and remanded the case with instructions to strike the property from the schedule. (R. 31-38).

A petition for writ of certiorari was filed on April 11, 1942, and was granted on May 11, 1942.

SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals erred in holding that Rose L. Mangus was an indispensable party to the proceeding under Section 75 of the Bankruptcy Act, and that her failure to join in the petition in the first instance was fatal to the jurisdiction of the District Court over the property of Walter L. Mangus.

2. The Court erred in holding that any defect in parties was not cured by the subsequent joining of Rose L. Mangus under order of the court.

3. The Court erred in holding that the rule in general bankruptcy that whatever interest the bankrupt has in property is susceptible of administration, is not applicable to Section 75 of the Bankruptcy Act.

4. The Court erred in holding that upon the expiration of the time given in the notice of forfeiture any interest of Rose L. Mangus in the property passed to Miller, and that Walter L. Mangus did not have the right to pay the full purchase price of the property and to acquire the full ownership of the real estate subject only to any equity that Rose L. Mangus alone might have had.

5. The Court erred in holding that "—any final order or judgment which the Court could make in the premises would be inconsistent with equity, in contraven-

tion of the Constitutional rights of the parties and contrary to the fundamental purposes of the Bankruptcy Act—," that the difficulties were insurmountable, and that neither Walter L. Mangus nor Rose L. Mangus acquired any remedial rights under the Act.

ARGUMENT

ALL PROPERTY OF A FARMER-DEBTOR IS SUBJECT TO THE JURISDICTION OF THE BANKRUPTCY COURT.

It was clearly the intention of Congress to subject all of the property of a petitioning farmer-debtor under Section 75 of the Bankruptcy Act to the exclusive jurisdiction of the Federal Court. Section 75 (n) provides in part:

> The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition. 11 U. S. C. A., Section 203 (n).

Section 75 (o) effectually protects the ownership and possession of the debtor's property until he has had an

opportunity to meet with creditors and to make a composition and extension proposal as provided by the Act.

> Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:
>
> (1). Proceedings for any demand, debt, or account, including any money demand;
>
> (2). Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land.
> 11 U. S. C. A., Section 203 (o).

It has been held by this Court that these provisions granted to the bankruptcy court

> ". . . exclusive jurisdiction of the petitioning farmer and all his property with complete and self-executing statutory exclusion of all other courts."
>
> Kalb v. Feuerstein, 308 U. S. 433; 84 L. Ed. 370; 60 S. Ct. 343; 41 Am. Bankr. Rep. (N. S.) 501.

It was held in the recent case of

> Wright v. Logan, 62 S. Ct. 508; 86 L. Ed. 443,

that all of the assets of the debtor are subjected to the jurisdiction of the bankruptcy court including rights of redemption. The Court said:

> "It is nevertheless appropriate to point out at this time that whatever right of redemption the

petitioners had when they first applied for adjudication under 75 continued to be a part of their assets, subject to administration by the bankruptcy court. For 75 (n) subjects all of the farmer-debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court, and provides that 'the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this section'."

THE INTEREST OF A JOINT PURCHASER UNDER A CONTRACT FOR SALE OF LAND IS "PROPERTY" WITHIN THE MEANING OF THE STATUTE

The statute specifically provides that property of the farmer includes

> " . . . all real or personal property or any equity or right in any such property including, among others, contracts for purchase, contracts for deed or conditional sales contracts . . ."
> Sec. 75 (n), Bankruptcy Act.

There are no exceptions to this broad grant of power, and this Court has held that the statute should be liberally construed to accomplish the purposes for which it was enacted.

> Wright v. Union Central Life Ins. Co., 311 U. S. 273; 85 L. Ed. 184; 61 S. Ct. 196.
>
> Kalb v. Feuerstein, supra
>
> John Hancock Mut. L. Ins. Co. v. Bartels, 308 U. S. 180; 84 L. Ed. 176; 60 S. Ct 221.

Despite the sweeping provisions of the statute discussed above, the respondent contended and the Circuit Court of Appeals held that the interest of one of two joint purchasers under a contract for the sale of land cannot be

protected by, or administered under the Act. (R. 36-37). After stating that an estate created by a joint tenancy is susceptible of administration under the general bankruptcy law, the Court said:

> "Thus it is conceivable that the estate of Walter L. Mangus would be the proper subject matter of a general bankruptcy proceeding, absent jurisdiction of the bankruptcy court over the estate of the joint tenant. 11 U. S. C. A. 110 (a). In re Brown, supra. Cf. In re Carpenter, supra. But a proceeding under Sections (a)-(r) of 75, 11 U. S. C. A. Section 203 (a) (r) does not operate to pass title from the bankrupt to the trustee or the bankruptcy court, but contemplates a status quo pending an adjustment and composition of his debts and is designed to grant a moratorium wherein the debtor will retain title and emerge from the proceedings seized with all the property subjected to the bankruptcy proceedings. Wright v. Union Central Life Ins. Co., supra.
>
> This is what Walter L. Mangus seeks to accomplish here. Suppose then that he is permitted to invoke the jurisdiction of the court over his estate and in his attempt to adjust and effect a compromise of his debts what are his rights and what are the rights of Miller? The contract between Walter L. Mangus, Rose L. Mangus, and Miller provides for the payment of the sum of $4,000.00 for a deed to certain property; the deed to be delivered upon the payment of the contract price. In effecting an adjustment and compromise shall Mangus be required to pay the entire purchase price for an estate in common with the seller, which could be no more than a one-half interest, because Miller is now seized (fol. 40) of the interest of Rose L. Mangus over which

the court has no jurisdiction, or shall Miller be required to accept one-half of the unpaid indebtedness for one-half interest in the property, to be held as tenant in common with Mangus? It becomes readily apparent that any final order or judgment which the court could make in the premises would be inconsistent with equity; in contravention of the Constitutional rights of the parties, and contrary to the fundamental purposes of the Bankruptcy Act. The manifest difficulties are insurmountable."

It is provided in

Subsection S (4) of Section 75, 11 U. S. C. A., Sec. 203 s (4), as follows:

". . . The provisions of this title shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition."

The interest of a joint purchaser is "property" within the meaning of the statute. The courts have held that such a purchaser has an equitable interest in the land described in the contract. He has a right upon payment of the purchase price as provided by the contract to demand and receive the legal title, and may obtain specific performance in a court of equity.

1 Tiffany Real Property (3rd Ed.), Sec. 307.

In re Ben Boldt, Jr. Floral Co., (CCA 10), 37 F. (2d) 499.

Smith v. Jones, 21 Utah 270; 60 P. 1104.

A joint interest in such a contract may be conveyed, or may be levied upon and sold at execution.

4 Thompson on Real Property (Perm. Ed.), Secs. 1780-1783.

The Utah statute designating property subject to execution is broad enough to cover a joint interest in a contract of sale.

Section 104-37-9, Revised Statutes of Utah, 1933, provides:

"All goods, chattels, money and other property, both real and personal, and any interest therein, of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution. Shares and interests in any corporation or company, and debts and credits and all other property, both real and personal, and any interest in either real or personal property, and all other property not capable of manual delivery, may be levied on as on writs of attachment. Gold dust and bullion must be returned by the officer as so much money collected at its current value, without exposing the same to sale. Until a levy on personal property, it shall not be affected by the execution. (C. L. 17, Sec. 6920).

See Spalding v. Allred, 23 Utah 354; 64 P. 1100.

Some common law limitations upon the alienability of a joint interest in property and the rights and liabilities of joint owners have been changed by statute.

Sections 45-0-1, and 45-0-2, Revised Statutes of Utah, 1933, provide:

45-0-1:

"A conveyance, release or sale may be made to or by two or more persons acting jointly and one or more, but less than all, of these persons acting either by himself or themselves or with other persons; and a contract may be made between such parties.

45-0-2:

"No contract shall be discharged because after its formation the obligation and the right there-

under become vested in the same person, acting in different capacities as to the right and the obligation. (L. 29, p. 101, Sec. 2)."

Utah has adopted the Uniform Joint Obligations Act, Title 47, Revised Statutes of Utah, 1933, which in part provides:

"3. The amount or value of any consideration received by the obligee from one or more of several obligors, or from one or more of joint or of joint and several obligors, in whole or in partial satisfaction of their obligations shall be credited to the extent of the amount received on the obligation of all co-obligors to whom the obligor or obligors giving the consideration did not stand in the relation of a surety."

The Circuit Court of Appeals, in this case, recognized these characteristics of a joint purchaser's right and held that such a right can be seized by creditors and sold, and is susceptible of administration under the general Bankruptcy law, but for some reason, which is not clear to the writers, cannot be protected under Section 75 of the Bankruptcy Act. (R. 36). There is no provision in the statute which would support such a conclusion. On the contrary, it is provided that the jurisdiction and powers of the court in a proceeding under Section 75 shall be the same as if a voluntary petition for adjudication had been filed and a decree entered.

Section 75 (n) provides in part as follows:

"In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudi-

> cation had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

It is asserted by the Court that after forfeiture of the Rose L. Mangus interest, the vendor became owner of a one-half interest, and in the event of payment of the entire purchase price by Walter L. Mangus, he could obtain only an undivided one-half interest in the land. (R. 36-37) This statement is contrary to the terms of the contract and to the law.

According to the affidavit of respondent (R. 5), the contract provided that upon default, the vendor might, at his election, be released from his obligation to convey, and the buyers' interest in the land would be terminated. It was alleged that the vendor had elected to take advantage of this provision.

Thus upon forfeiture, under the express terms of the contract, the interest of Rose L. Mangus terminated, and the vendor was released from his obligation under the contract to convey to her. He did not step into her shoes and become entitled to join with Walter L. Mangus in demanding and receiving a deed from himself upon payment of the purchase price.

Walter L. Mangus, as a joint purchaser, was entitled to pay the full purchase price and receive a deed, subject to any rights Rose L. Mangus had as to him.

In the case of

Newforth v. Hall, 5 Kan. App. 726; 46 P. 982,

a bond was made for the sale and conveyance of land to two joint purchasers for $1000. One tenant paid $500 and sued for specific performance of the contract to the extent of one-half of the land. The court denied relief say-

ing that the contract provided for the sale of the whole parcel of land for $1,000,

> ". . . and had Sulzman or Hall (the joint purchasers), or either of them paid the full purchase price for this land and interest, as provided in the bond, Newforth (vendor) could have been compelled to specifically perform all of the conditions of the bond."

If, as held by he Circuit Court of Appeals, Rose L. Mangus' right was forfeited, this would not affect the right of Walter L. Mangus to pay the purchase price and to receive a deed. His right was not subject to forfeiture after filing his petition under Section 75 of the Bankruptcy Act, except upon order of the court, made after report of the Conciliation Commissioner.

Subsection o, Section 75, Bankruptcy Act.
Kalb v. Feuerstein, supra.

ROSE L. MANGUS WAS NOT AN INDISPENSABLE PARTY.

Subsection S (4) of Section 75 authorizes

> ". . . partnership, common, entirety, joint community ownerships . . ."

and farming corporations where at least 75 per centum of the stock is owned by actual farmers to join in one petition. However, there is nothing to indicate that co-owners may not file separate petitions. The language, ". . . and any such parties *may* join in one petition," is permissive rather than mandatory.

At common law, all joint tenants were indispensable parties to actions involving their common property.

2 Williston on Contracts, (Rev. Ed.), Secs. 326, 327.
Wythe's Va. Rep., Appendix 401, 402

Utah has, by statute, abolished the rule.

Section 104-3-18, Revised Statutes Utah, provides:

> "All persons holding as tenants in common or as joint tenants, or any number less than all, may jointly or severally commence or defend any civil action or proceeding for the enforcement or protection of the rights involved. In all cases one tenant in common or joint tenant can sue his co-tenant."

See also

Karren v. Rainey, 30 Utah 7; 83 P. 333.

The language of the State statute quoted is broad enough to include a proceeding under Section 75 of the Bankruptcy Act.

The position taken by the respondent that the property described in the contract must be stricken from the schedules because of the failure of an indispensable party to join is inconsistent with his argument that the forfeiture of the interest of Rose L. Mangus was accomplished at a time when the exclusive jurisdiction over Walter L. Mangus and his property was in the Bankruptcy Court. Certainly, if it takes the joint action of both joint purchasers to protect the interest of either under Section 75, it would be impossible to forfeit the interest of one by notice or legal proceeding against one which would be ineffectual as to the other. Under respondent's theory, both joint tenants are indispensable parties for purposes of protecting their rights, but their rights may be forfeited one at a time. No such distinction can be found in applicable statutory or case law.

Any contention that equity could not be done because Rose L. Mangus did not join the proceeding in the first instance disappeared when she joined on February 6, 1941, with the approval of the District Court. (R. 7).

DIFFICULTIES OF ADMINISTERING PROPERTY UNDER SECTION 75 ARE NOT INSURMOUNTABLE.

As indicated above, the Circuit Court of Appeals took the position that upon forfeiture of the interest of Rose L. Mangus, (R. 35, 37), the respondent became owner of her interest in the contract of sale. It reasoned that it was faced with the dilemma of either requiring Walter L. Mangus to pay the full purchase price for a one-half interest in the land, or of requiring Miller to convey a one-half interest to him for one-half of the purchase price. It said it could not do either and concluded that the difficulties were insurmountable. This argument is based on the false premise that Mrs. Mangus' interest remained in existence after forfeiture and passed to respondent. It is apparently assumed that the debtors were joint owners of the land which passed to respondent upon forfeiture rather than mere joint owners of the purchasers' interest in a contract of purchase. According to the affidavit in support of the motion to strike, the contract provided that in event of default by the buyers, the seller would be released from his obligation to convey, all payments theretofore made would be forfeited, the seller could re-enter and take possession of the premises, and the buyers would at once become tenants at will thereof. (R. 5). It is further asserted that the notice required the buyers to make payment of the delinquencies before January 3, 1941, and upon their failure so to do

> ". . . that petitioner had elected that he would thereupon and without notice or demand, be released of all obligations to convey said property and that said agreement and the buyers' rights, interest, and possession in said property would thereupon forthwith terminate and end and be of no further force or effect whatever." (R. 5).

This can mean but one thing. If the notice was effectual as to Rose L. Mangus, it released the vendor from his obligation to convey to her, and it terminated her interest

in the property, namely, her right to obtain title upon payment of the purchase price. If the Rose L. Mangus interest was terminated, the property was incumbered only by the right of Walter L. Mangus to pay the full purchase price and receive the full title. It was no concern of the vendor as to what rights Rose L. Mangus had against Walter L. Mangus, in the event he paid the balance on the contract and received title.

This case then presented for administration the ordinary contract for deed mentioned in Subsection (n) of Section 75, with no more difficulties than the usual case.

If there were extraordinary complications, it would not justify striking the property. Congress gave the debtors valuable rights, which cannot be denied because a court may think that they are difficult to administer.

The judgment of the Circuit Court of Appeals should be reversed and the case remanded with directions to reinstate in the schedules the debtors' interest in the contract of sale and to proceed as provided by Section 75 of the Bankruptcy Act.

Respectfully Submitted.

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